

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Ahmed Elfiky MD d/b/a Sinai Medical
Associates PC
(Applicant)

- and -

Hereford Insurance Company
(Respondent)

AAA Case No.	17-24-1351-4708
Applicant's File No.	24-004493
Insurer's Claim File No.	HLV23000175-02
NAIC No.	24309

ARBITRATION AWARD

I, Richard Martino, the undersigned arbitrator, designated by the American Arbitration Association pursuant to the Rules for New York State No-Fault Arbitration, adopted pursuant to regulations promulgated by the Superintendent of Insurance, having been duly sworn, and having heard the proofs and allegations of the parties make the following **AWARD**:

Injured Person(s) hereinafter referred to as: Assignor/patient

1. Hearing(s) held on 10/23/2024
Declared closed by the arbitrator on 10/23/2024

Robert Bott Esq. from The Licatesi Law Group, LLP participated virtually for the Applicant

David Tetlak Esq. from Law Offices of Ruth Nazarian participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,400.78**, was NOT AMENDED at the oral hearing.
Stipulations WERE NOT made by the parties regarding the issues to be determined.
3. Summary of Issues in Dispute

Applicant seeks reimbursement of the unpaid balance of charges for shockwave therapy treatments performed on 11/15/23 and 1/10/24, following a 4/21/23 automobile accident.

The respondent issued timely partial denials of the applicant's charges based upon a fee schedule defense.

The Assignor, a 20-year-old male was involved in an automobile accident that occurred on 4/21/23.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the Electronic Case Folder as of the date of the hearing.

This is a claim for the unpaid balance of shockwave therapy treatments performed on 11/15/23 and 1/10/24, following a 4/21/23 automobile accident.

The Assignor, a 20-year-old male was involved in an automobile accident that occurred on 4/21/23.

Applicant seeks \$700.39 for each date of service which represents the unpaid balance of the shock wave treatments to the lumbar spine and shoulder on 11/15/23, and the cervical spine and knee on 1/10/24.

Respondent reimbursed the applicant one unit (\$700.39) for each date of service at issue rather than the two units billed.

Respondent asserts that applicant is only entitled to one unit at \$700.39.

An insurance carrier's timely asserted defense that the bills submitted were not in accordance with the Workers' Compensation fee schedule is sufficient, if proven, to justify a reduction in payment or denial of a claim. See New York Hosp. Med. Ctr. of Queens v. Country-Wide Ins. Co., 295 A.D.2d 583, 586 (2d Dept. 2002); East Coast Acupuncture, P.C. v. New York Cent. Mut. Ins., 2008 NY Slip Op 50344(U) (App. Term 2d Dept., Feb. 21, 2008); A.B. Med. Servs., PLLC v. American Tr. Ins. Co., 15 Misc.3d 132(A), 2007 NY Slip Op 50680(U) (App. Term, 2d & 11th Jud Dists 2007); Rigid Medical of Flatbush, P.C. v. New York Cent. Mut. Fire Ins. Co., 11 Misc.3d 139(A), 816 N.Y.S.2d 700, 2006 NY Slip Op 50582 (U) (App. Term 2d & 11th Jud Dists. 2006); Ultra Diagnostics Imaging v. Liberty Mut. Ins. Co., 9 Misc.3d 97, 98, 804 N.Y.S.2d 532, 2005 N.Y. Slip Op. 25402 (App Term, 2d Dept.); Capiro Med., P.C. v Progressive Cas. Ins. Co., 7 Misc 3d 129(A), 2005 NY Slip Op 50526 (U) (2005); Triboro Chiropractic & Acupuncture, PLLC v New York Cent. Mut. Fire Ins. Co., 6 Misc.3d 132 (A), 2005 NY Slip Op 50110 (U) (App Term, 2d & 11th Jud Dists 2005); Park Health Center v. Prudential Property & Cas. Ins. Co., 2001 NY Slip Op 40650 (U) (2nd & 11th Jud Dists).

Respondent has submitted the fee schedule analysis of John Cerf CPC, dated 7/19/24.

He argues that a plain reading of CPT code 010T indicates that extracorporeal shockwave therapy is billed for the entire musculoskeletal system, and therefore, the applicant may not bill extracorporeal shockwave therapy separately for two parts of the body, even if modifier 59 is in fact used.

Further, CPT 0101T is not defined by the AMA CPT as a "per an atomic site" treatment but instead, for high energy extracorporeal shockwaves involving the musculoskeletal (MS) system. The MS system includes multiple muscles and ligaments in the body. Mr. Cerf explains that when necessary the CPT instructs on the reporting of additional units per segmented anatomical descriptors. CPT 0101T descriptors do not instruct the reporting of multiple units.

As Mr. Cerf explains, "BR" was removed from CPT 0001T and replaced with a fixed RVU in the fee schedule, eliminating the BR factors including the number procedures in total operative time when determining the fee for service.

Applicant is therefore entitled to 2.78 RVUs multiplied by the surgery conversion factor of \$251.94 for a total of \$700.39, regardless of the number procedures in length of time the services were rendered. Applicant is entitled to one unit or \$700.39.

Applicant argues that the ESWT at issue were performed on the spine and shoulders/knees.

Applicant relies on an award by Arbitrator Gaspari in AAA # 17 - 21 - 1227 - 3301 which includes an analysis of a request by Olga Sklyut, Esq. to the AMA on 4/28/22 asking whether or not the code can be used more than once per visit if the procedure is performed on distinct body areas (i.e. knee and neck, etc.)? The AMA responded (on 5/17/22), "from a CPT coding perspective and based solely on the information provided in your inquiry, it may be appropriate to report code 0101T, extracorporeal shock wave involving musculoskeletal system, not otherwise specified, with modifier 59, distinct procedural services. If the procedure is performed on separate anatomical body regions/areas in the musculoskeletal system (e.g., knee and neck) that require the efforts to be repeated on separate body regions in the course of the procedure, that require separate effort and work, it may be appropriate to report the code 0101T with modifier 59. Since code 0101T does not specify distinct levels including the spine, if the entire spine is treated with extracorporeal shockwave therapy at one session, only one unit of 0101T may be reported."

At the hearing, respondent argued that the CPT Book does not permit modifiers with Category III codes. While the Surgery Fee Schedule is used for purposes of establishing a conversion factor, there is nothing to suggest that the Category III codes adopt any of the Surgery section instructions or ground rules.

However the AMA qualified their response, indicating that it may be appropriate to report CPT 0101T with modifier 59. The AMA did not consider the fact that the Category III section of the fee schedule does not contain modifiers. Further, the AMA expressly stated that as with most Category III codes, reimbursement policies vary amongst third-party payers.

I find Mr. Cerf's affidavit is sufficiently detailed and persuasive. Applicant has failed to submit an expert/coder affidavit to rebut respondent's evidence.

After a review and consideration of the submissions, I find the Respondent's coder affidavit to be persuasive. As such, I find that Respondent has established its fee schedule defense.

Due to the foregoing reasons the claim is denied in its entirety.

5. Optional imposition of administrative costs on Applicant.
Applicable for arbitration requests filed on and after March 1, 2002.

I do NOT impose the administrative costs of arbitration to the applicant, in the amount established for the current calendar year by the Designated Organization.

6. **I find as follows with regard to the policy issues before me:**

- The policy was not in force on the date of the accident
- The applicant was excluded under policy conditions or exclusions
- The applicant violated policy conditions, resulting in exclusion from coverage
- The applicant was not an "eligible injured person"
- The conditions for MVAIC eligibility were not met
- The injured person was not a "qualified person" (under the MVAIC)
- The applicant's injuries didn't arise out of the "use or operation" of a motor vehicle
- The respondent is not subject to the jurisdiction of the New York No-Fault arbitration forum

Accordingly, the claim is DENIED in its entirety

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY
SS :
County of Nassau

I, Richard Martino, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

10/25/2024
(Dated)

Richard Martino

IMPORTANT NOTICE

This award is payable within 30 calendar days of the date of transmittal of award to parties.

This award is final and binding unless modified or vacated by a master arbitrator. Insurance Department Regulation No. 68 (11 NYCRR 65-4.10) contains time limits and grounds upon which this award may be appealed to a master arbitrator. An appeal to a master arbitrator must be made within 21 days after the mailing of this award. All insurers have copies of the regulation. Applicants may obtain a copy from the Insurance Department.

ELECTRONIC SIGNATURE

Document Name: Final Award Form
Unique Modria Document ID:
460059400969b8ba9672ab222b9343fc

Electronically Signed

Your name: Richard Martino
Signed on: 10/25/2024